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PATENT
Docket No. 220002057125
Client Reference 1994-161-9

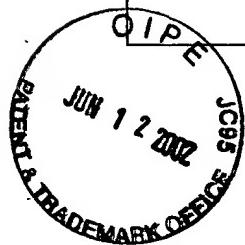
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[Signature]
Tamara Alcaraz



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Frank J. GIORDANO et al.

Serial No.: 09/847,936

Filing Date: May 3, 2001

For: TECHNIQUES AND COMPOSITIONS
FOR TREATING CARDIOVASCULAR
DISEASE BY *IN VIVO* GENE
DELIVERY

Examiner: To Be Assigned

Group Art Unit: 1646

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. § 1.47(a)

U.S. Patent and Trademark Office
Mail Stop DAC, P.O. Box 2327
Arlington, VA 22202

Dear Sir:

This request for reconsideration is filed in response to the communication dated April 12, 2002 dismissing the petition under 37 CFR 1.47(a) filed in the above-referenced matter.

Applicant has been given two months from the mailing of the communication, that is until June 12, 2002, within which to file this response. Submitted herewith is a Declaration of Facts in support of this. Based upon this declaration and the following remarks, reconsideration of the denial of applicant's petition is kindly requested.

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OFFICE OF PATENTS

In its communication dated April 12, 2002 denying applicants' petition filed under 37 CFR 1.47(a), the Office requested that applicants send a copy of the specification of pending patent application USSN 09/847,936 along with an inventor's declaration to Frank J. Giordano's last known address. The Office further requested that efforts be made to determine whether the Dr. Giordano's last known address was in fact a correct address. Applicant respectfully submits that the declaration of Catherine Polizzi submitted herewith demonstrates that such efforts to secure Dr. Giordano's signature have been made. In particular, a complete copy of the relevant specification together with an inventor's declaration (and assignment) were sent to Dr. Giordano at his business address and that such documents were in fact received by him as evidenced by his signature on a Federal Express receipt. As of the date of this submission, Dr. Giordano (consistent with his previous conduct) has not returned the signed declaration.

Based upon the forgoing, applicant submit that they have made a *bona fide* and diligent effort to secure execution of the inventor's declaration by Frank J. Giordano and kindly request reconsideration of the petition filed under 37 CFR 1.47(a).

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **220002057125**. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Dated: June 12, 2002

By: Catherine M. Polizzi
Catherine M. Polizzi
Registration No. 40,130

Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, California 94304-1018
Telephone: (650) 813-5651
Facsimile: (650) 494-0792

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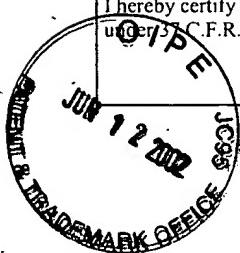
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Examiner: To Be Assigned

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**DECLARATION OF FACTS IN SUPPORT OF RECONSIDERATION OF DENIAL OF
PETITION FILED UNDER 37 C.F.R. §1.47(a)**

U.S. Patent and Trademark Office
Mail Stop DAC, P.O. Box 2327
Arlington, VA 22202

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OFFICE OF PETITIONS

Dear Sir:

This declaration is made as to the facts that are relied upon to establish the *bona fide* and diligent effort made to secure the execution of the inventor declaration by Frank J. Giordano for the above-referenced pending U.S. patent application.

I. IDENTIFICATION OF PERSON MAKING THIS DECLARATION OF FACTS

1. Catherine M. Poizzi, Ph.D., J.D., Morrison & Foerster LLP, 755 Page Mill Road, Palo Alto, California 94304-1018, attorney of record in this matter.

2. Morrison & Foerster, LLP, a law firm of which I am a partner, has been attorney of record in this matter and related prior U.S. patent applications, including without limitation, USSN 08/485,472, filed June 7, 1995, now USPN 5,792,453; USSN 08/722,271, filed February 27, 1996, now USPN 6,100,242; USSN 09/132,167, filed August 10, 1998, now USPN 6,174,871.

**II. DETAILS OF REFUSAL OF INVENTOR GIORDANO TO SIGN PAPERS
RELATIVE TO PRESENTLY PENDING APPLICATION AND EFFORTS TO
OBTAIN INVENTOR GIORDANO'S SIGNATURES**

1. On May 10, 2002, a copy of the application as filed, along with an assignment and declaration were sent to Dr. Giordano at his last known business address: Yale University, School of Medicine, Boyer Center for Molecular Medicine, Room 336C, 295 Congress Ave., New Haven, CT 06510, via Federal Express including a postage paid, return-addressed Federal Express envelope and a request for Dr. Giordano to complete and return the enclosed declaration and assignment documents as soon as possible. The confirmation receipt for the Federal Express envelope (tracking number 7904 1380 3157) indicates that the package was received at the proper address. A copy of the confirmation receipt is attached hereto.
2. On May 29, 2002, an e-mail was sent to Dr. Giordano (at frank.Giordano@yale.edu) apprising him that the documents were sent (including the address to which they were sent), inquiring whether he had received such documents and indicating that should no response to the e-mail be received from him, it would be assumed he had received the documents.
3. On May 29, 2002, an e-mail was received from Dr. Giordano wherein he stated that he was uncertain whether he had received the particular patent application and asked for further information on it. The e-mail did not indicate that any other mailing address would be preferable for receiving such documents.

4. On May 30, 2002, an e-mail response was sent to Dr. Giordano providing further details of the documents and informing him that Federal Express records indicated the documents had been received at his address on May 13, 2002. Further, the e-mail specifically requested that Dr. Giordano provide a mailing address to which the documents should be sent, if he had not yet received them.
5. On June 2, 2002, an e-mail was received from Dr. Giordano wherein he stated that he had not received the documents and requested that they be resent. He offered no other address and indicated he would be out of the office through the week, but back in the office full time on Monday, June 10, 2002.
6. On June 3, 2002, a copy of the application as filed, an assignment and declaration were again sent to Dr. Giordano at his last known business address: Yale University, School of Medicine, Boyer Center for Molecular Medicine, Room 336C, 295 Congress Ave., New Haven, CT 06510, via Federal Express including a postage paid, return-addressed Federal Express envelope. Included with the documents was a letter requesting that Dr. Giordano execute and return the declaration and assignment via facsimile by June 10, 2002. Additionally, the letter requested that the original declaration and assignment be returned via Federal Express in the provided pre-paid Federal Express envelope. The confirmation receipt for the Federal Express envelope (tracking number 7904 3780 8395) indicates that the package was received at the proper address and was signed for by Dr. Giordano himself. A copy of the confirmation receipt is attached hereto.
7. As of the date of execution of this declaration, there has been no further communication from Dr. Giordano and neither the declaration nor assignment have been received.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Dated: June 12, 2002

By: Catherine M. Polizzi
Catherine M. Polizzi
Registration No. 40,130

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Palo Alto, California 94304-1018
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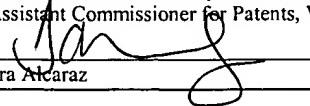
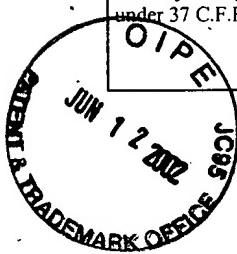
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DELIVERY

Examiner: To Be Assigned

Group Art Unit: 1646

**PETITION TO CORRECT ORDER OF INVENTORSHIP
UNDER 37 C.F.R. § 1.182**

U.S. Patent and Trademark Office
Mail Stop DAC, P.O. Box 2327
Arlington, VA 22202

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OFFICE OF PETITIONS

Dear Sir:

Applicant hereby petitions the Assistant Commissioner to change the order of inventorship in the above-captioned application from "Frank J. GIORDANO, Wolfgang DILLMAN, H. Kirk HAMMOND" to --H. Kirk HAMMOND, Wolfgang DILLMANN, Frank J. GIORDANO--.

A fee of \$130.00, as required by C.F.R. § 1.17(h) is enclosed.

06/17/2002 AWONDAF1 00000091 031952 09847936

01 FC:122 130.00 CH

The Assistant Commissioner is hereby authorized to charge any fees under 37 C.F.R. § 1.16, 1.17 and 1.21 that may be required by this transmittal, or to credit any overpayment to **Deposit Account No. 03-1952** referencing docket no. 220002057125. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Dated: June 12, 2002

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